Scott. II-27—50,006—23-11-42.

Devt (1943) Department.

Form

175 SERIES.

G.O. No. 1452

Dated 13.7.43

[Despatch Abstract.]

Co-operative Societies - Arbitration - Harpanahalli Co-operative Society, Bellary district - Petition under section 57 of the Act - Rejected.

6249/3/43
25-3-43

To

The Advisor to His Excellency the Governor of Madras
Development Department, Fort, Madras.

25 MAR 1943

Sir,

Subject:- Harapanhalli Co-Operative Society (Bellary Dt)
Claim No. 14/42-43 - appeal against the orders of the Registrar of Co-Operative Societies, Madras.

Ref:- Registrar's No. 10171/42 dated 21st February 1943

Plaintiff.

The Harapanhalli Co-Operative Credit Society No.90 Bellary Dt.

Defendents.

(1) L. Syama Rao
(2) I. Sridharappa
(3) I. Brahmappa.

Claim No.14/42-43 on the file of the Co-Operative Sub Registrar incharge of the Hospet Co-Operative Cebtral Bank Ltd Hospet.

The above said three defendents executed a bond to the Plaintiff Society on 1-7-40 for Rs. 1000/- under cash credit loan. The said became overdue on 1-7-41. The Plaintiff society, instead of closing the loan, colluded with D 1 and granted him extension of time without the knowledge or consent of D 2 and D 3. It was only in July 1942, when the arbitration reference was filed, that D 2 and D3 came to know for the 1-st time that the loan was outstanding. Inspite of their protests the Arbitrator decreed against all the three. On appeal the Registrar in his letter No. 10171/42 dated 21.2.43 refused to interfere. Hence this appeal under Section 57 of the Act

The grounds for appeal amoung others are that:-

1. The cash credit loan is a short term loan which shall be collected, or closed as an alternative, on the last day of the Co-Operative year (30-th June). The Plaintiff Society nither - - - collected the loan nor closed the loan account. On the other hand

~~-2-~~ -3- ref. 13 below

it gave D 1 extension of time for another one year, without the consent or knowledge of the surities.

* Exhibit A ref. pp 11 & 12 below

2. Under Section 135 and 139 of the Contract Act, the moment the time was granted to the Principal borrower without the consent or knowledge of the surities, the liability of the latter is discharged. Therefore D 2 and D 3 or not bound by the contract. The suit against D 2 and D 3 is therefore untenable under Law.

3. At the time the cash credit loan was sanctioned, the Defendent No.1 was the Manager of the society drawing a salary of Rs. 50/-per month with good property. But when extension of time was granted, the situation was contrary. He was about to be dismissed, the society was about to be superceeded, and the misappropriation case on D 1 with two other Directors was about to be investigated and launched and D 1 was about to alienate his properties. To such a man the Directors gave extension of time and that too without the knowledge of the surities. The Directors have evidently collided with D 1 with the object of duping D 2 and D 3. In the natural course of events, the society ought to have proceeded first against D 1 and against the responsible directors for any loss or deficit

+ Ex. P 13 below

Registrar's circulars to that effect vide para 6 on page 13 below

4. According to Law and Registrar's circulars extension of time for cash credit should not be given. But this society has given extension of time to one who was the worst defaulter and did not pay even One rupee out of Rs. 1000/-taken under Principal. When enquired, the plaintiff society refused to enlighten them with the reasons for giving such an extension of time contrary to all canons of equity and justice

5. Consequent on supercession the Superceeding Officer filed Claim No.14/42-43 against the all the three defendents and inspite of Law under which D 2 and D 3 are protected, the Arbitrator issued a decree against all the three defendents. Under Section

(N)

Cf. pp 21-23 (N)

139 of the I-L-Act the moment the extension of time was granted (1-7-41) without the knowledge or consent of the surities, D 2 and D 3 cease from the liability ipsofacto. When, therefore, the Arbitration reference was filed in July 1942 D 2 and D 3 ceased to be surities, and the reference is therefore not in order

6 The Registrar of Co-Operative Societies Madras has declined to interfere perhaps on the strength of the explanation offered by the Plaintiff society and the Arbitrator, without giving D 2 and D 3 an opportunity to explain themselves

The petitioners therefore pray that the records may be perused and justice offered to the petitioners. The petitioners are prepared to go to Madras if necessary to explain themselves in person. The petitioners further pray, that in the mean time, the execution proceedings may be ordeered to be stayed against D 2 and D 3.

Ojaru Brahmappa
Ojaru Sreeharappa.

Harapanhalli
Dated 12-3-43

Copy to Registrar of Co-Operative Societies Madras with a request to instruct the Sale Officer to stay proceedings against D 2 and D 3 till the Government has decided the claim.

Dev. Dept

Memo No. 7288-B/43-1 dated 15-4-43.

Sub:- Co-operative Societies - Arbitration - Harapanhalli Co-operative Society, Bellary dist - Claim No. 14/42-43 - Petition against orders of Registrar under section 57 of the Act.

Ref:- Petition from Sri S. Siddharappa and T. Brahmappa, dated 12th March 1943

Referred to the Registrar of Co-operative Societies for remarks with the connected records

To the R. C. S. (with the petition at pages 1-6 C.F. in original to be retained with the reply).

R. 15-5-1943.

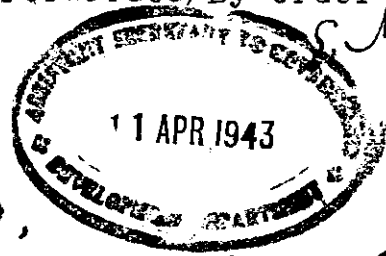
$

Forwarded/By order

S. Mahmood

Superintendent.

Pkc/30.3.43.



Resubmitted, p.s.d.w.

Court fee stamps to the value of Rs 1-8-0 is hereunto affixed last page. Three Rupees eighty Annas (Rs 3-8-0) stamps for the enclosures is also hereunto fixed

Syed Brahmappa B.
7.4.1943

Government of Madras.
Development Department.
Memorandum No.6249-B/43-1, dated 27th March 1943.

Cooperative Societies - Arbitration - Harapanhalli Co-operative Society, Bellary district - Claim No.14/42-43 - Petition under section 57 of the Act.

Petition from Messrs. S. Sridharappa and I. Brahmappa dated 12th March 1943.

A petition under section 57 of the Madras Cooperative Societies Act, 1932, should be affixed with court fee stamps of the value of Rs.1-8-0 and its enclosures with stamps of the value of annas eight for every three hundred and sixty words or fraction thereof. The petition is returned for resubmission after compliance.

S.A.M. Khan,
Additional Under Secretary to Govt.

To Sri Ijari Brahmappa, Member, Harapanhalli Cooperative Society, Harapanhalli, Bellary District.
(with enclosures)

Copy to the Registrar of Cooperative Societies.

p.t.o.

11

C.F. 32.

Co-operative Department

From (Name) W.R.S., Satthianadhan, Esq., I.C.S.,
Designation Registrar of Co-operative Societies, Madras.
Station

Received ..... Registered No. 12615 B/43
5-6-43

To
The Additional Secretary to Government, Development Department, Fort St. George, Madras.

ADDITIONAL UNDER SECRETARY TO GOVERNMENT
8 JUN 1943
DEVELOPMENT DEPARTMENT

Enclosures:

R.C. No. 2571/43 L dated 1st June 1943

Sir,

Sub: Arbitration - Harpanahalli Co-operative Society - Bellary district - Claim No.14/42-43 Petition under Section 57 of the Act against the orders of the Joint Registrar - Remarks.

Ref: Government Memorandum No.7288-B/43-1 dated 15-4-1943.

The petition dated 12-3-43 from Messrs Sridharappa and Brahmappa referred to me for remarks in the memorandum cited above is resubmitted with the following remarks:

2. The petition is the result of an arbitration decree passed against the petitioners in claim No.14/42-43 by the Co-operative Sub Registrar, Hospet. The petitioners are defendants 2 and 3 in the decree and Sri L. Syama Rao is defendant No.1. The three defendants executed a bond in favour of the Harpanahalli Co-operative Society on 1-7-40 for a loan of Rs.1,000. In that bond all the three defendants jointly undertook to repay the amount of the loan within 12 months from the date of the bond. They have also agreed in the bond that if the debt is not paid on or before the due date all the three defendants are liable to pay jointly and severally the overdue amount with interest at 2 pies per rupee per mense and costs till the date of realisation. The debt was not repaid and the society therefore filed an arbitration reference on which the decree which is the subject matter of this petition, was passed against all the three defendants, by the Co-operative Sub Registrar, Hospet.

3. The main contention of the petitioners is that the loa should have been closed when it fell overdue but instead, exte sion of time for a year was granted without the knowledge or consent of the sureties namely the petitioners. It is conten therefore that the amount is recoverable only from the princip borrower absolving the sureties from the liab/ility. Section 135 and 139 of the Indian Contract Act have been quoted in support of this contention. Section 135 reads as follows:-

"A contract between the creditor and the principal debtor by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharge the surety, unless the surety assents to such contract."

The contract between the creditor and the principal borrower as contemplated in the section should be a valid one if it is to discharge the surety from his liability. The point for consideration therefore, is whether the extension of time granted by the Panchayat in this case was valid and binding on the society. According to by-law No.47 of the by-laws of the society (copy enclosed) the conditions necessary for a valid extension are (1) that the reasons for the extension should be recorded in writing by the Panchayat and (2) that the approval of the General body of the society and the Union to which the society is affiliated, should be obtained for the extension. These two requirements have not been complied with in this case. The reasons for the extension have not been recorded by the Panchayat. Please see copy of the resolution enclosed. The extension was also not approved by the General body of the society andthe union to which the society is affiliated as contemplated in the by-laws of the society. Therefore the contract of extension entered into between the society

12

and the principal borrower is an invalid contract on which the appellants cannot claim discharge under section 135 of the Contract Act. The extension being invalid, the sureties were liable for the overdue debt as per the terms of the bond which they had executed to the society. It is on this ground that the arbitrator passed the award, and it is on this ground that the Joint Registrar declined to interfere with the award.

4. The plea of the petitioners based on section 139 of the contract Act is not sustainable for the same reason. This section is extracted below:

"If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged."

A

The act of the creditor in this case is the grant of extension. The surety could be discharged under this section only if the act of the creditor is a legal act. I have shown above that the grant of extension was not within the competence of the Panchayat. The extension granted by the Panchayatdars therefore cannot be construed as an act of the creditor for which section 139 will absolve the sureties.

5. When the exemptions claimed under section 135 and 139 of the Contract Act do not apply, the terms of the bond will have to be enforced. The bond stated that if the debt was not paid before the due date all the three defendants were liable to pay jointly and severally. The loan was taken on 1-7-40 repayable in a year (i.e) on 1-7-41. It was not repaid on that date and the Panchayat did not sue the parties at once. The case therefore falls within Section 137 of the Indian Contract Act. Reference is invited to the illustration under this section at page 492 of the Indian Contract Act by Pollock and Mulla (sixth edition). The illustration is this. B owes to C a debt guaranteed by A . The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship. Therefore the decree in this case is valid.

B

6. In paragraph 4 of the petition it has been stated that extension of time for cash credit should not be given according to law and Registrar's circulars. It is not known what provision of law is referred to by the petitioners; nor do I find any circulars of the Registrar, which prohibit extension of time.

7. In paragraph 6 of the petition it has been observed that defendants 2 and 3 were not given an opportunity to explain themselves before the Joint Registrar passed his orders. The statement is not correct. Sri Brahmappa one of the signatories to the present petition was the author of the petition referred to above made to the Registrar. There was no necessity to call for any additional particulars from him. A notice was issued on 16-1-43 to Sri Sridharappa who is the other signatory to the present petition and defendant No.2 and Sri L. Syama Rao defendant No.1, requesting them to send before 15-2-1943 all material papers they had in the matter, together with memoranda of objection which they proposed to file. No reply was received from defendant No.(1). Defendant No.2 submitted a reply stating that he had nothing more to add to what he had already deposed before the Arbitrator and to what has been stated in the petition of defendant No.3 to the Registrar. It is not therefore, correct to say that defendants 2 and 3 were not given an opportunity to explain themselves. The other points mentioned in the petition do not deserve to be commented upon.

I suggest in conclusion that the petition may be rejected. Claim file No.14/42-43 relating to this case and my office disposal D.10171/42 are enclosed for reference and return.

For Registrar 4649

A.K.R./4-6.

By-law No.47.

Should, however, a borrower be unable to repay the prescribed instalment of the loan within three months after the due date, the Panchayat may, for satisfactory reasons to be recorded in writing and with the approval of the general body and the local Union to which the society is affiliated, sanction extension for a period of one year. x x x x
No extension or renewal shall be granted without the general permission xx of the Union to which the society is affiliated and all cases in which they have been granted shall be reported to the Registrar at least once a year

Proceedings of the Panchayat Meeting of the Harpanahalli Co-operative Credit Society B.90 held on 4-7-1941.

Resolution No.10)
Cash credit applications for extension of time

1) L Srinivasa Rao	Rs.1,000	Time extended up to
2) L. Syama Rao	Rs.1,000	30-6-1942.

14 — 43/(13) P3

Dev Dept.

Sub: Cooperative Societies – Arbitration – Harpanahalli Cooperative Society – Bellary Dist – Petition under section 57 of the Bombay Co-operative Societies Act ~~for Election~~ Rejected

Read (1) From Messrs Sridharappa and Brahmappa Vakils dated 12.3.43 — H 1–5 above
(2) From the Registrar of Cooperative Societies, Bombay No. 25-71/43 L dated 1-6-43 — H 11–12 above

Order No. 1452 dated 13/7/43

~~The petition of Sri Sridharappa~~ and Sri Gjari Brahmappa is rejected.

Sri Gjari Brahmappa
Member, Harpanahalli Cooperative Society, Bellary Dist

To R.C.S. with the records of the case.

14/7

(V) + (N)

Date 12.3.43

Date 12.7.43

15

Surety Bond.

1st July 1940, Bellary Dt., Harpanahalli Sub-District, Harpanahalli village.

To

The President,
Co-operative Credit Society (No.(B.90), Harpanahalli.

We three give the following surety bond.

2. I, the first among the three have this day, taken from the Society in the presence of sureties a sum of Rs.1000/- as loan for cultivation purposes. For this sum of Rs.1000/- I shall pay interest at the rate of eight annas and four pies per hundred rupees per month and shall repay the loan within 12 months either in a lump sum or in instalments. If I fail to repay the loan within the prescribed time, I shall pay interest at the rate of 2 pies per rupee per month till the date I repay the loan and its interest in full. Ourselves and our property are jointly and severally liable for all dues to the Society.

3. We agree to be bound by the present as well as the future rules and regulations of the Society.

Dew

C.No 7288-B/43 Sub:- Co-operative Societies - Arbitration - Harpanahalli Co-operative Society - Bellary district - claim No 14/42-43 - Petition under section 57 of the Act.

fls 1-3 C.F From Messrs Siddharaffa and Brahmaffa No Nil dated 12 3 1943.

Page 4 C.F Memo to the Registrar of Co-operative Societies No 7288-B/43-1 dated 15.4.43.

fls 11-12 C.F From the Registrar of Co-operative Societies R.C.No 2571/43-2 dated 1.6.43.

To Advise

fls 1-3 C.F The case relates to a petition from Messrs Siddharaffa and Brahmaffa, members of the Harpanhalli Co-operative Society, Bellary dist. against the orders of the Joint Registrar declining to interfere with the orders of the Arbitrator in claim No 14/42-43. (Page 43 of (V)) (Page 23 of (IV)) The Registrars remarks on the petition are at pages 11-12 C.F.

2. The facts of the case have been summarised by the Registrar in paragraph 2 of his letter at page 11 C.F. and his remarks on the main contentions of the petitioners will be found in paragraphs 3 & 7 of his letter at pages 11-12 C.F. In the circumstances fls. 12 C.F. explained by the Registrar, he suggests that the petition

may be rejected.

3. Orders are solicited in the petitions:

8/6/43

we may agree with the Reg. and reject the appeal.

9/6/43. A.D.S.

Legal Advr to the Commissioners

The whole question turns on whether the Trustees (petitioners) were discharged from their Society's (by virtue of) the Covenant granted, although it was not by the Instrument of the Covenant.

15/6/43

Legal Dept

It does not appear in this case that the creditor society entered into any valid contract with the principal debtor granting him an extension of time within the meaning

Dev. 40 7288 B/yes
15 JUN 1943
ASSISTANT SECRETARY
13820
LEGAL DEPARTMENT

of section 135 of the Contract Act. According to the bylaws of the society the panchayat had no ~~right~~ power to grant an extension of time without the concurrence of the general body. No such concurrence was obtained. It follows therefore that there was no valid contract giving an extension of time to the principal debtor. The position then is that the society which could have instituted proceedings for the recovery of the amount immediately after 1.7.1941 did so only somewhere towards the end of 1942. The proceedings were quite in time. I do not think there is any reason for interference in this case.

ACTION TAKEN BY GOVERNMENT
Legal W.O. 3820-I
30.6.43.

DW To Advs

Rec 30/6/43

DW

Rule from page 1 above may be read.
Orders are solicited on the petition.
We may agree with Leg and the R.C.S.
that the act of the R.C.S. in rejecting
the plea was quite legal & justified.
The plea may be rejected 2/7/43. S.

4

To addl ws.

A draft order is submitted at p14 c/f.

12.7.43

12.7.43

17/7/43

Issued as G.O. No. 1452 (Ms) Dev dated 13-7-43